(3) (A)

IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL No. 871 OF 2001

Appellant (In Jail) — Dhiraji S/o Dakalu Sonkar aged about 80 years, Occupation- Cultivator, village Khudmuda , Thana Patan, Distt. Durg (C.G.)

- versus-

Respondent: State of Chhattisgarh Through Police Thana- Patan, Distt. Durg (C.G.)

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE

(21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 871/2001

Dhiraji

Vs.

State of Chhattisgarh

Shri H.B.Agrawal, Counsel for the Appellant.

Shri Sudhir Bajpayee, P.L. for the State.

JUDGMENT

This appeal has been preferred by the appellant challenging the judgment dated 07-09-2001 passed by the IInd Additional Sessions Judge, Durg in Session Trial No. 100/2000 whereby he has been convicted under Section 376 (1)/511 of IPC and sentenced to undergo RI for five years and pay fine of Rs.1000/-, in default of payment of fine six months imprisonment.

The facts of the case in brief are that on 31-01-2000 the mother and father of the prosecutrix namely Gauri, aged about 7-8 years, had gone out and when they came back, the prosecutrix complained pain in her genital region. On enquiry she disclosed that the accused/appellant had sexually assaulted her after removing the under garments. She also narrated the incident to Guharam, Baldau and Onkar. On 02-02-2000 a meeting was convened in the village and there also the prosecutrix narrated the incident before the Panchas. Thereafter on 03-02-2000 the complaint was lodged by

Guharam, the father of the prosecutrix in Police Station Patan. Police recorded the statement of the witnesses. The prosecutrix was also got examine by a lady doctor namely Mamta Pandey who has been examined before the trial Court as PW 8. So also the accused was medically examined by Dr. S.K.Agrawal, PW 6. Thereafter, on committal charges were framed by the Trial Court under Section 376 of IPC. Prosecution has examined Rajkumari, the mother of the prosecutrix as PW 1, Guharam, father of the prosecutrix as PW 2, Ramgopal as PW 3, Narayan as PW 4, Gauri Bai, the prosecutrix herself as PW 5, Dr. S.K.Agrawal as PW 6, Lawan Kumar as PW 7, Dr. Mamta Pandey as PW 8 and R.K.Joshi, the Investigating Officer as PW 9.

Learned Trial Court after recording the statement of the witnesses mentioned above as also of the accused, by the impugned order convicted and sentenced the appellant as above. Learned Trial Court in paragraph 32 of the judgment has held that the prosecutrix, aged 8-10 years was not subjected to rape and accordingly, the accused was acquitted of the charges under Section 376 (1) of the IPC leveled against him. Learned Counsel for the appellant has taken number of grounds in the memo of appeal. During the argument he however pressed the appeal only on one ground i.e. the age of the appellant who according to the judgment was 80 years old. He further submits that sentence of five years imprisonment imposed on the appellant is too harsh and prays for reduction thereof. Learned Counsel for the appellant further submits that the appellant is in jail since 07-09-2001, i.e. from the date of judgment and during trial also he was in jail for two months

and looking to the jail sentence of three years five months that has already been undergone by the appellant the ends of the justice would be served if the sentence is converted to that of already undergone. Learned counsel for the State submits that looking to the age of prosecutrix and conduct of the appellant he does not deserve any leniency and therefore, the appeal should be dismissed.

I have heard learned counsel for the parties.

From perusal of record it is clear that the appellant is 84 years old and he has already undergone jail sentence of three years and five months and under these circumstances I am of the view that the ends of the justice would be served if the sentence is converted to that of already undergone by the accused. Accordingly, the appeal is partly allowed. The sentence of five years imprisonment and fine of Rs. 1000/- imposed on the appellant is converted in to the sentence of three years five months imprisonment which has already been undergone by the accused. Now, he is directed to be set at liberty if not required in any other case.

Sd/-
DHIRENDRA MISHRA
Judge

24.12.09